

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

KENNETH FRANCIS SIMMONS,

Defendant.

CASE NO. CR19-5372 BHS

ORDER

This matter is before the Court on Kenneth Francis Simmons' Motion for Reconsideration, Dkt. 110, of the Court's Order, Dkt. 108, denying his Motion for Compassionate Release, Dkt. 100. Because Simmons does not establish a basis warranting reconsideration, his motion is denied.

**I. BACKGROUND**

Most of the facts relevant to the motion for reconsideration are set forth in the order denying Simmons' motion for compassionate release. *See* Dkt. 108 at 1–3. Accordingly, the Court need not repeat those facts.

The Court denied the compassionate release motion because (1) Simmons did not establish that his medical conditions have substantially diminished his ability to provide

1 self-care, (2) Simmons did not establish that he has been denied access to adequate  
2 medical care, and (3) a motion for compassionate release is not the proper vehicle for  
3 Simmons to challenge the conditions of his confinement. *Id.* at 5.

4 Thirteen days after the Court denied the motion for compassionate release,  
5 Simmons replied to the Government’s response to that motion. Dkt. 109. In his reply,  
6 Simmons reiterates that, for various reasons, the Bureau of Prisons has failed to provide  
7 to him adequate medical care. *Id.* at 3–7. He also contends that, as a result of the COVID-  
8 19 pandemic, he has been subjected to unusually harsh prison conditions. *Id.* at 8–9.  
9 Finally, he asserts that the factors set forth in 18 U.S.C. § 3553(a) weigh in favor of his  
10 release. *Id.* at 9–10.

11 Simmons moves for reconsideration, arguing that his “response to the  
12 [G]overnment’s reply brief got delayed and literally ‘crossed in the mail’ with the Order  
13 that is Document 108 filed 2/14/23, which was also the date that [he] placed the response  
14 into the prison mail box.” Dkt. 110 at 1–2. He contends that the Court therefore “did not  
15 have the critical information in Simmons’ response” when it ruled on his compassionate  
16 release motion. *Id.* at 2.

## 17 II. DISCUSSION

18 “Motions for reconsideration are disfavored. The court will ordinarily deny such  
19 motions in the absence of a showing of manifest error in the prior ruling or a showing of  
20 new facts or legal authority which could not have been brought to its attention earlier  
21 with reasonable diligence.” Local Rules W.D. Wash. LCrR 12(b)(13)(A). “[A] motion for  
22 reconsideration should not be granted, absent highly unusual circumstances, unless the

1 district court is presented with newly discovered evidence, committed clear error, or if  
2 there is an intervening change in the controlling law.” *Kona Enters., Inc. v. Est. of*  
3 *Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (quoting *389 Orange St. Partners v. Arnold*,  
4 179 F.3d 656, 665 (9th Cir. 1999)). Mere disagreement with a previous order is an  
5 insufficient basis for reconsideration, and reconsideration may not be based on evidence  
6 and legal arguments that could have been presented at the time of the challenged  
7 decision. *Haw. Stevedores, Inc. v. HT & T Co.*, 363 F. Supp. 2d 1253, 1269 (D. Haw.  
8 2005).

9 For several reasons, Simmons fails to establish an entitlement to relief. Notably,  
10 Simmons filed his reply brief on February 27, 2023, Dkt. 109, which was nearly one  
11 month after his compassionate release motion was noted for consideration on January 30,  
12 2023, Dkt. 103. Therefore, this brief was not timely filed. In any event, Simmons does  
13 not establish the existence of a manifest error in the Court’s order denying his motion for  
14 compassionate release. Also, he fails to show that there are any material new facts or  
15 legal authority which could not have been brought to the Court’s attention earlier with  
16 reasonable diligence. Accordingly, reconsideration is unwarranted.

### 17 III. ORDER

18 Therefore, it is hereby **ORDERED** that Kenneth Francis Simmons’ Motion for  
19 Reconsideration, Dkt. 110, is **DENIED**.

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1 Dated this 9th day of March, 2023.

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4 BENJAMIN H. SETTLE  
5 United States District Judge  
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